

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITES STATES OF AMERICA,)	CASE NO. 1:18 CR 349
)	
Plaintiff,)	
)	JUDGE SARA LIOI
v.)	
)	SENTENCING MEMORANDUM
CALVIN C. CODY,)	OF CALVIN C. CODY
)	
Defendant.)	CERTIFICATE OF SERVICE

The Defendant, Calvin C. Cody, by and through undersigned counsel, hereby submits the following memorandum to this Honorable Court for review prior to imposing a sentence. Further, Mr. Cody requests a sentence that is appropriate but not greater than necessary, taking into consideration the factors set forth in 18 U.S.C. §3553(a) and the attached Memorandum that is incorporated herein by reference.

Respectfully submitted,

/s/ Samuel G. Amendolara
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SENTENCING MEMORANDUM

I. Brief Factual and Procedural Case History

On May 30, 2018, Defendant Calvin C. Cody was at the Cleveland Clinic for a medical appointment. Upon entering the facility, he was searched by hand-held metal detector and found to be wearing body armor and was in possession of a 9mm Taurus pistol with 7 rounds of ammunition. He was subsequently transported to the Cleveland Police Department for further investigation.

Since Mr. Cody was previously convicted of felony offenses, he was/is prohibited from possessing the firearm which was on his person on the day of his arrest. A Northern District of Ohio grand jury returned a one-count indictment on June 27, 2018 for being a Felon in Possession of a Firearm and Ammunition, in violation of 18 U.S.C. § 922(g)(1).

On November 6, 2018, the Court granted the defendant's unopposed motion for a pre-plea Criminal History Category Report. Mr. Cody thereafter pleaded guilty to the indictment on April 12, 2019 pursuant to a Rule 11(c)(1)(C) plea agreement.

Mr. Cody will now stand before this Honorable Court for sentencing on July 29, 2019.

II. Personal Characteristics and History

A. Medical History

Mr. Cody, age 37, was diagnosed with neuroendocrine liver cancer in 2015. In 2017, he was informed that his cancer progressed to stage 4 and, unfortunately, that it is terminal. During his course of treatment, Mr. Cody was informed that he only has around three more years to live. He has had three surgeries between 2016 and 2017 and requires another operation that would possible extend his life. Cavin has also undergone treatment for his condition and is receiving

further medical care from Dr. Thomas J. Chirchella and Dr. Adel Youssef. Mr. Cody was subsequently prescribed a myriad of medications as part of his treatment regimen.

Calvin's malignant cancer creates many adverse effects that he is forced to deal with on a daily basis. Mr. Cody suffers from intense abdominal pain that requires prescription opioids for it to be tolerable. He constantly spits up blood and vomits. This has made normal functions like sleeping, eating, and even breathing extremely difficult at times.

The following notes from his medical records summarize many of the medical issues he faces:

Patient's Name/Date of Birth: Calvin [REDACTED] (37 y.o.)

Date: February 28, 2019

CC: Metastatic neuroendocrine tumor to the liver

HPI:

Patient is a pleasant 37 year old male whom was found to have metastatic disease in his liver. He underwent a liver biopsy which showed a metastatic neuroendocrine tumor to the liver. He has undergone y90 as well as an embolization. He states that he is barely eating because he has abdominal pain. He was off of LAR but is now on scheduled to begin long acting treatment again. He denies having diarrhea but states that certain foods make him sick. He is currently incarcerated. His small bowel primary has never been operated on.

Past Medical History:

Diagnosis	Date
• Cancer (HCC)	
neuroendocrine	

Assessment/Plan:

Metastatic neuroendocrine tumor to the liver with small bowel primary

- we discussed today that he will continue to have issue with neuroendocrine metastasis unless the small bowel primary is removed.
- on imaging you can see the metastatic lymph node within the mesentery, which is close to the SMA
- we discussed that removal of the small bowel primary will double his survival
- he will still need LAR and liver treatment, however, it will definitely slow down the growth.
- he is going to think about it and get back to us
- will need CTA abdomen prior to surgery to evaluate the lymph node and vessel relationship to the SMA for operative planning.

45 Minutes of which greater than 50% was spent counseling or coordinating his care.

Thank you for the consultation allowing me to take part in Mr. Cody's care.

T. Chirichella M.D.
2/28/2019
3:17 PM

It is evident that the Defendant is coping with life-threatening medical conditions. Mr. Cody's health will likely continue to decline with each passing day with little or no notice of which day might be his last.

It is not surprising that due to his debilitated physical condition, Calvin has incurred numerous trips to the hospital just in the past year alone.

- **February 8, 2019** – Admitted to Mercy Health St. Elizabeth's hospital after referral from Dr. Youseff for abdomen and pelvis examination. Discharged 2/10/2019
- **February 11, 2019** – Examined by Dr. Youseff
- **February 14, 2019** – Laboratory blood draw at Mercy Health St. Elizabeth hospital revealed low white blood cell count
- **February 20, 2019** – Admitted to Mercy Health St. Elizabeth's hospital for abnormal HIAA levels. Referred by Dr. Jawad E. Francis; discharged 2/22/2019
- **March 5, 2019** – Admitted to Mercy Health St. Elizabeth's hospital on referral from Dr. Jawad E. Francis for CT scan. Discharged 3/7/2019
- **March 7, 2019** – Admitted to Mercy Health St. Elizabeth's hospital and received a CT scan that showed enlarged lymph nodes. Discharged 3/9/2019

Evidently, Mr. Cody's condition requires careful monitoring by medical professionals and numerous hospital visits – sometimes more than one a day.

III. Nature and Circumstances of the Offense

Mr. Cody understands that he was and is forbidden from possessing a firearm and body armor. Mr. Cody accepts full responsibility and has come to appreciate the seriousness of his offense. He understands that he is not eligible for probation and knows he must be punished. He knows that his actions are not justified in any manner.

IV. Proposed Sentence

As the PSI notes, Mr. Cody has a total offense level of 12 and a Criminal History Category of VI. This provides a guideline imprisonment range of 30 – 37 months. Pursuant to the

Rule 11(c)(1)(C) plea agreement in this case, the parties agree that the appropriate disposition of this case is a specific sentence of 33 months.

Mr. Cody asserts that this sentence is justifiable and due to his deteriorating health, respectfully requests this Honorable Court to consider house arrest/electronic monitoring as a means of serving his sentence. Doing so will alleviate the constant burden on Mr. Cody and prison staff regarding ongoing travel to his medical appointments as well as dealing with his compromised physical condition in a house rather than in the confines of prison. Private housing is available for him with his parents at [REDACTED], Cleveland, OH 44106. This was the same residence Mr. Cody was residing at prior to his arrest.

In an effort to address his compromised physical condition and medical issues, the Defendant's treatment and appointments could be verified by a probation officer or Marshal service. Mr. Cody requires continued close medical supervision in order to successfully treat the issues facing him.

V. Conclusion

Mr. Cody accepts responsibility for carrying a firearm when he was forbidden from doing so and understands that he must be punished. He has had a tough life and will continue to suffer. He realizes that any day could be his last. Attached is a letter from Dr. Adel Youssef outlining Calvin's prognosis and necessity to undergo the surgical procedure that could extend his life.

Mr. Cody requests a sentence in accordance with 18 U.S.C. §3553(a), and given the terminal illness and ongoing medical issues he faces, respectfully requests this Court to consider commuting his prison sentence to house arrest and electronic monitoring.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 26, 2019, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. All other parties will be notified by Regular U.S. Mail. Parties may access this filing through the Court's system.

/s/ SAMUEL G. AMENDOLARA
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